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Global Climate

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3. Global Climate

(1) Introduction

Setting a new record, the Durban climate conference finished in the early morning of Sunday, 11 December, one and a half days after its scheduled end. The fruit of all the overtime labour was an agreement on a second commitment period of the Kyoto Protocol, a mandate to launch negotiations on a new comprehensive climate agreement, and decisions to move forward with near-term climate action on the basis of the Cancún Agreements from the previous year's conference. This outcome constitutes a major achievement for the EU and the most vulnerable countries, the small island developing states (SIDS, united in the Alliance of Small Island States, AOSIS) and the least developed countries (LDCs), who had pushed for such a negotiating mandate against the strong resistance of the USA, India, China and others.

This report lays out the major developments in Durban and assesses the main outcomes. It is structured along the Bali roadmap for a future climate agreement that was agreed at the Bali climate conference in 2007. The Bali roadmap comprises negotiations under two tracks. First, the Ad Hoc Working Group on Further Commitments by Annex I Countries under the Kyoto Protocol (AWG-KP), established at the conference in Montreal in 2005, has been negotiating future emission targets for developed countries (listed in Annex I of the United Framework Convention on Climate Change (UNFCCC) and hence called Annex I countries). As the Kyoto Protocol's first commitment period expires in 2012, the AWG-KP is to agree on new targets for a second commitment period post-2012 as well as associated rules for accounting emissions. Second, the Ad Hoc Working Group on Long-term Cooperative Action under the Convention (AWG-LCA) has also been negotiating commitments for Annex I countries, intending to cover those that have not ratified the Protocol – that is, the USA. In addition, the LCA negotiates “Nationally appropriate mitigation actions” of developing countries, which are to be supported by Annex I countries with technology, financing and capacity-building. Both the actions and the support are to be “measurable, reportable and verifiable”. The LCA also negotiates how such support for developing countries' mitigation actions may be delivered as well as how developing countries may be supported in adapting to the impacts of climate change.

The first part of this report is devoted to the negotiations and outcome on the legal form of the future climate regime, that is, the mandate and the Kyoto Protocol. The second part discusses near-term action along the “building blocks” of the Bali Action Plan.

(2) What Future Framework?

Ever since the start of the climate regime, negotiations have been characterised by fundamental differences of opinion on who should contribute how much to the fight against climate change and in particular who should go first. Developing countries point to the historical responsibility of developed countries for creating the climate problem and insist that Annex I countries should therefore take the lead in combating climate change, as they have committed to in Art. 3.1 of the UNFCCC. Annex I countries for their part point to the rising emissions in the large rapidly industrialising countries of the South and demand that they need to step up their efforts as well. This issue has increasingly come to a head over the recent years as the Kyoto Protocol's first commitment period expires at the end of 2012, raising the question what will be the future framework after 2012. The main stumbling block is that,

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based on their fundamentally different views on who has which responsibility, countries hold equally different views on what should be the legal outcome of the negotiations.

The Annex I countries that have ratified the Kyoto Protocol are not prepared to go any further without significant action by the USA and the rapidly industrialising countries of the South. Ideally, they want to have the Protocol replaced by a new universal framework that also covers the USA and the rapidly industrialising countries. In particular Canada, Japan and Russia have explicitly stated that they refuse to be bound under a second Kyoto period.

The G-77 and China have wanted the Kyoto Protocol to continue as a reflection of industrialised countries' historical responsibility, in parallel to a separate outcome under the LCA. The latter would cover commitments by the USA, mitigation actions by non-Annex I countries, adaptation, as well as financial and technological support from Annex I to non-Annex I countries. However, there are also differences within the G-77. The countries that are most vulnerable to the impacts of climate change, the SIDS and the LDCs, have demanded a new legally binding protocol under the Convention that would work in parallel to the Kyoto Protocol. By contrast, in particular China, India and Saudi Arabia have held that decisions by the Conference of the Parties (COP) would be sufficiently binding and that first the content of the agreement should be determined before discussing its legal form.

The USA for their part have demand a new structure that should be "very different" from the Kyoto Protocol. According to the USA, the future regime should be based on a "pledge and review" bottom-up approach. In this version, each country would basically determine its own level of ambition and the international system would mainly serve as a notary to collect and regularly review the implementation of these pledges – as has been done with the pledges in the Cancún Agreements. The USA have also insisted that the degree of bindingness must be the same for all the major emitters – a demand that is vehemently rejected by developing countries.

Another crucial question was the timeline for a mandate and a second Kyoto period. The SIDS demanded that a new agreement should be negotiated during 2012 and be implemented from 1 January 2013. The EU had taken the position that a new agreement should be agreed by 2015 at the latest, to become operational as soon as possible thereafter. By contrast, in particular China, India and the USA argued that negotiations on a new framework should, if at all, only start in 2015.

Ultimately, Parties came to a compromise according to which countries agree to negotiate "a protocol, another legal instrument or an agreed outcome with legal force." These negotiations are to take place in a new "Ad Hoc Working Group on the Durban Platform for Enhanced Action", which is supposed to start work in 2012 and finish as early as possible but not later than 2015. The new agreement is supposed to come into effect and be implemented only from 2020.¹

In addition, countries agreed to a second commitment period for the Kyoto Protocol. However, the details of the new reduction targets (the quantified emission limitation or reduction objectives, QELROs) have not yet been decided, this will need to take place next year. The length of the second commitment period has also not been decided yet, options are five years (2013-17) or eight years (till 2020).² This is mostly due to the EU who in addition

¹ Decision 1/CP.17, Establishment of an Ad Hoc Working Group on the Durban Platform for Enhanced Action, Report of the Conference of the Parties on its seventeenth session, held in Durban from 28 November to 11 December 2011, Addendum, Part Two: Action taken by the Conference of the Parties at its seventeenth session, FCCC/CP/2011/9/Add.1, 15 March 2012, pp. 2f [Durban Platform].

² Decision 1/CMP.7, Outcome of the work of the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol at its sixteenth session, Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its seventh session, held in Durban from 28 November to 11 December 2011, Addendum, Part Two: Action taken by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol at its seventh session, FCCC/KP/CMP/2011/10/Add.1, 15 March 2012, pp. 2-10.

to the concern about its domestic legislation running till 2020 also posited that there should be coherence with the timeline of the new mandate.

(3) What Near-Term Action?

In addition to clarifying the long-term perspective, the Durban conference also had the task to enable near-term action on the building blocks of the Bali Action Plan and the Cancún Agreements: mitigation, adaptation, finance and technology.

(A) Mitigation

The mitigation-related negotiations on implementing the Cancún Agreements revolve around several controversial issues. One is increasing the level of ambition of the emission reduction pledges that have so far been put forward. Further crucial sub-issues are transparency (measuring, reporting and verification) and reducing emissions from deforestation and forest degradation. In addition, industrialised countries strongly champion the establishment of new carbon market mechanisms to achieve cost-effective mitigation.

(i) Overall Level of Ambition

The broad agreement on keeping global warming to 2°C above pre-industrial levels at most was one of the few advances of the Copenhagen conference. However, a series of reports has unanimously concluded that the emission reduction pledges countries made in Copenhagen and Cancún fall 5-10 Gt short of what is needed to maintain a good chance of staying below 2°C. In particular the pledges of industrialised countries fall far short of the reduction of 25-40% by 2020 compared to 1990 as considered in the IPCC's fourth assessment report.³

The question for Durban was therefore whether the gap between pledged and needed reductions would be recognised, and if a process would be established to close it. While developing countries demanded that industrialised countries should increase their level of ambition and were supported by the European countries, the US argued that the Cancún Agreements do not foresee a process for strengthening pledges. In addition, industrialised countries demanded that there should also be a process to assess and strengthen the level of ambition of the pledges made by developing countries. However, this was initially rejected by the major emerging economies and other developing countries.

In the end, countries agreed to have both the texts on developed and developing country mitigation acknowledge that there is a gap between what has so far been pledged and what is needed globally. Developed countries are urged to increase their level of ambition.⁴

The decision that establishes the AWG on the Durban Platform has further provisions on increasing the level of ambition. It decides to launch a work plan on enhancing ambition "with a view to ensuring the highest possible mitigation effort by all Parties." Parties and observers are invited to submit their views by 28 February 2012, and there is to be a workshop at the first negotiation session in 2012.⁵

³ See e.g. UNEP, Bridging the Emissions Gap Report (2011).

⁴ Decision 2/CP.17, Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, Report of the Conference of the Parties on its seventeenth session, held in Durban from 28 November to 11 December 2011, Addendum, Part Two: Action taken by the Conference of the Parties at its seventeenth session, FCCC/CP/2011/9/Add.1, 15 March 2012, pp. 4-54, Sections II.A and II.B [LCA Outcome].

⁵ Durban Platform, *supra* note 1.

(ii) Measuring, Reporting and Verification

Another major topic in the negotiations is the question of measuring, reporting and verification (MRV). MRV creates transparency and demonstrates that pledges and commitments are actually being fulfilled. Developing countries agreed in Bali to take verifiable nationally appropriate mitigation actions (NAMAs) if these are supported by industrialised countries in an equally verifiable manner. However, the details of this “MRV for MRV” remained to be worked out. While developing countries have held the view that only actions that are supported by developed countries should be subject to international MRV, developed countries have demanded that also those actions should be submitted to international MRV that developing countries support through their own resources. Developing countries, however, have rejected this demand as being incompatible with their national sovereignty. A further MRV question has been posed by the non-participation of the USA in the Kyoto Protocol, which has significantly stronger MRV requirements for Annex I countries than the UNFCCC. Annex I countries that have ratified the Protocol have therefore generally desired the Annex I MRV provisions under the UNFCCC to be brought in line with those under the Protocol.

In Cancún, Parties had compromised on enhancing both Annex I and non-Annex I MRV. Developed countries are to submit annual GHG inventories and biennial reports on their progress in achieving emission reductions as well as on the provision of financial, technology and capacity-building support to developing countries. In addition, the Cancún Agreements established an international process for the international assessment and review (IAR) of emissions and removals by developed countries. For developing countries Cancún decided that they are to submit national communications every four years, so far there had been no set frequency. Developing countries should also provide biennial update reports with updates on their national GHG inventories, information on mitigation actions, needs and support received. Furthermore, there is to be a process of international consultation and analysis (ICA) on the biennial reports and NAMAs are to be recorded in an international registry. Detailed modalities for these new requirements were to be elaborated in the future negotiations.

In Durban, the major bones of contention centred on common accounting rules, which were opposed in particular by the USA, the Registry for NAMAs, the update of guidelines for national communications, biennial reports of developed and developing countries, ICA for developing countries and IAR for developed countries. At the end of the conference, the COP decided to develop the Registry as a dynamic, web-based platform for matching actions seeking international support with support available. For the preparation of biennial reports by developed and developing countries, separate guidelines were adopted and support is to be provided to developing countries for the preparation of their biennial update reports. Furthermore, modalities and procedures for IAR and for ICA were adopted in Durban. IAR is to be conducted using a technical review of information as well as a multilateral assessment of the implementation of emission reduction targets. Given the strong initial resistance of many developing countries to have any meaningful analysis and public scrutiny, the final result for ICA provides for moderate transparency: A team of technical experts is to conduct the technical analysis and their draft summary report is to be finalized in consultation with the Party and subsequently to be presented to the Subsidiary Body for Implementation (SBI). It will also be made available to the public online.⁶

⁶ LCA Outcome, *supra* note 4, Sections II.A and II.B.

(iii) Reducing Emissions from Deforestation and Forest Degradation

Emissions from deforestation and forest degradation account for roughly 20% of all global CO₂ emissions. The Cancún Agreements request developing countries to develop a national strategy or action plan, followed by the development of a forest reference level and a corresponding monitoring system, and the introduction of an information system on safeguards, such as respecting the rights of indigenous peoples and other stakeholders as well as issues of biological diversity and forest conservation. The Cancún Agreements envisage phases for the implementation of REDD+, with countries first developing a policy framework and capacity building, followed by demonstration activities and, in a third phase, fully MRV-able results-based actions.

This year, the main issue on the table was the overall decision on a mechanism for REDD+ that delivers adequate, predictable and sustainable finance from developed to developing countries. Furthermore, the Cancún Agreements had requested its Subsidiary Body for Scientific and Technological Advice (SBSTA) to provide guidance on technical issues such as reference levels, measuring, reporting and verification of carbon, and information systems for the social and environmental safeguards agreed upon last year.

On finance, parties have been split for a long time over the sources of funding and the role of market mechanisms for reducing deforestation, and this division also governed the Durban talks on this issue. While many parties conceded that there should be an adequate amount of flexibility on the sources of financing that each party should be free to decide upon, many Annex I parties advocated for SBSTA developing modalities and procedures for market-based approaches. This was opposed mainly by the left-wing ALBA countries (the Bolivarian Alliance for the Peoples of our America) who underlined the importance of public funding; one suggestion from developing countries therefore foresaw text excluding offsetting and market solutions to REDD+ financing completely.

The final decision by the AWG-LCA⁷ stresses once more that every REDD+ activity is to adhere to the safeguards decided at COP 16. On the sources of financing, Parties agreed to first reiterating text of the Copenhagen Accord which stipulates that financial means for REDD+ should be “new, additional and predictable“, coming from “a wide variety of sources, public and private, bilateral and multilateral, including alternative sources”. On the use of market mechanisms, the decision states that market-based approaches “could be developed by the COP”. Moreover, the COP notes that non-market based approaches, such as “joint mitigation and adaptation approaches for the integral and sustainable management of forests” could also be developed. Reference is made to the financial mechanism of the Convention to provide results-based finance, therefore enabling, for example, the Green Climate Fund to provide a dedicated REDD+ window.

(iv) New Market Mechanism

A further sub-item of the mitigation negotiations under the LCA is the elaboration of “various approaches, including opportunities for using markets, to enhance the cost-effectiveness of, and to promote, mitigation actions”. Industrialised countries have taken the position that most of the financial support needed by developing countries could and should be delivered through the carbon market. At the same time most developed countries are dissatisfied with the existing Clean Development Mechanism (CDM) and have therefore proposed to develop new market mechanisms. On the other side, most developing countries have been rather

⁷ Ibid., Section II.C.

sceptical towards new mechanisms. While some see scaling up market mechanisms as a slippery slope towards adopting legally binding targets, others, in particular the ALBA countries, even reject market-based approaches in general.

In Durban, some parties such as the US wanted to see a rather open framework for new market mechanisms without specific definitions; this would have allowed countries such as Japan with their (voluntary) bilateral mechanism to count the emission reductions achieved in this non-UNFCCC scheme against their UNFCCC commitments. The EU, New Zealand and Australia advocated a top-down definition at UNFCCC level in order to maintain common standards and comparability. Therefore, they called for deciding on developing modalities and procedures for such a mechanism at Durban.

In the end, Parties agreed on a compromise text. The decision emphasizes that any market mechanism must comply with “standards that deliver real, permanent, additional and verified mitigation outcomes, avoid double counting of effort, and achieve a net decrease and/or avoidance of greenhouse gas emissions“. A work programme is set up in order to come up with a framework for such approaches to be considered at next year’s COP. On the other hand, a new market mechanism is defined to operate under the guidance and authority of the COP, which “may assist developed countries to meet part of their mitigation targets or commitments under the Convention”. The AWG-LCA is to develop modalities and procedures for this mechanism, again to be considered at next year’s COP.⁸

(F) Adaptation

In Durban, the adaptation negotiations continued to progress. The Adaptation Committee that was established in Cancún was affirmed as the overall advisory body to the COP on adaptation and made operational by deciding on modalities of membership, relation to the COP, and work modalities. The Adaptation Committee shall be directly accountable to the COP, but report to it through the subsidiary bodies. Its work will include consideration of relevant information and provision of recommendations on ways to strengthen coherence among adaptation bodies, programmes and activities within the UNFCCC; preparation of capacity overviews of regional centres and the preparation of periodic overview reports on, inter alia, implementation of adaptation activities and good practices. It shall also consider technical support and guidance to Parties in their preparation of national adaptation plans.⁹

The Adaptation Committee shall also support the Work Programme on Loss and Damage, which was renewed for the coming year in conjunction with a renewal of the Nairobi Work Programme.¹⁰

Finally, a process has been created to enable Least Developed Countries (LDCs) to assess their national adaptation needs and better plan their national adaptation activities accordingly. The decision's Annex lays down guidelines on how to formulate national adaptation plans, which include: 1. laying the groundwork and addressing gaps; 2. preparatory elements; 3. implementation strategies; and 4. reporting, monitoring and review. The decision

⁸ Ibid., Section II.E.

⁹ Ibid., Section III.

¹⁰ Approaches to address loss and damage associated with climate change impacts in developing countries that are particularly vulnerable to the adverse effects of climate to enhance adaptive capacity - Activities to be undertaken under the work programme, Report of the Subsidiary Body for Implementation on its thirty-fifth session, held in Durban from 28 November to 3 December 2011, FCCC/SBI/2011/17, 7 March 2012, p. 17.

further lays down an invitation to non-LDCs to employ the modalities for national adaptation plans, and general guidance on reporting, monitoring and evaluation.¹¹

(G) Finance

Financing efforts of developing countries to combat climate change is seen by many as one of the fundamental building blocks for an ambitious international climate regime. However, it has also been an issue of continuous dissent between developed and developing countries. Within the various tracks of finance negotiations, the main questions to be solved ultimately boil down to the mobilization of adequate amounts of finance, and the development of a strong funding institution under the UNFCCC. So, operationalising the Green Climate Fund (GCF) that had been agreed to be established in Cancún was seen as one of the major deliverables from Durban by many developing countries.

Over the course of 2011, the 40 members of the Transitional Committee that had been established in Cancún to develop the rules for the GCF had met four times in intense negotiations endeavouring to have an agreed design for the governing instrument to present in Durban. However, in the very last hours of the final meeting, the USA had objected to the outcome, followed by Saudi Arabia, citing unresolved issues in the document.¹² As a result, discussions on "reopening" the decision text in the main negotiations were at the centre of the finance negotiations in Durban.

COP President Nkoana-Mashabane held constant informal consultations on the matter, and finally managed to bring Parties to approve the governing instrument of the Green Climate Fund without reopening the text. Instead, a COP decision addresses some of the concerns that were tabled. There is to be a procedure to ensure that funding by the GCF's private sector facility does not contravene national climate strategies and plans. Furthermore, the Fund is given independent legal personality, and the UNFCCC secretariat and the GEF secretariat are tasked to set up an interim GCF secretariat. Developing countries gain the possibility for direct access to funding within the GCF. A selection process for the final host of the Fund has been set up, to be endorsed by the next COP. The decision also stresses the need to secure funding for the Green Climate Fund, but does not specify sources¹³

So the institutional arrangements for financing the combat against climate change were strengthened significantly. The same cannot be said for the question of mobilisation of actual funds under the UNFCCC. While long deliberations took place especially on long-term finance and the need to ramp up commitments in the period between 2013 and 2020, the final decision does not include heightened commitments on climate finance. In particular, against the hopes of many that had been sparked by the recommendations given by a G20 ministerial paper, pricing of bunker fuels for international aviation and maritime transport could not be included in the Durban outcome. The final decision only mentions continuation of considerations of "issues relating to emissions from international aviation and maritime transport" under a different section, and without reference to finance. Instead, a work programme on long term finance, including workshops, is to be set up for the course of 2012,

¹¹ Decision 5/CP.17, National adaptation plans, Report of the Conference of the Parties on its seventeenth session, held in Durban from 28 November to 11 December 2011, Addendum, Part Two: Action taken by the Conference of the Parties at its seventeenth session, FCCC/CP/2011/9/Add.1, 15 March 2012, pp. 80-86.

¹² Ballesteros, Anna: Cape Town Meeting must Get Design Of Green Climate Fund Right before Durban. WRI Insights. Available at <http://insights.wri.org/news/2011/10/cape-town-meeting-must-get-details-green-climate-fund-right-durban> (Accessed December 21, 2011).

¹³ Decision 3/CP.17, Launching the Green Climate Fund, Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its seventh session, held in Durban from 28 November to 11 December 2011, Addendum, Part Two: Action taken by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol at its seventh session, FCCC/CP/2011/9/Add.1, 15 March 2012, pp. 5-67.

in order to assess ways to scale up the mobilization of climate finance after 2012. It remains questionable if such a programme will yield tangible results for secure funding. Finally, fast start finance provided by developed countries was welcomed, but developed countries were urged to enhance the transparency of their reporting on fulfilment.¹⁴

(H) Technology

The Cancún Agreements established a new Technology Mechanism, consisting of a Technology Executive Committee (TEC), and a Climate Technology Centre and Network (CTCN). The TEC replaced the earlier Expert Group on Technology Transfer immediately after Cancún, and held its first meeting in September 2011 in Bonn in order to outline its future modalities and rules of procedure. The COP adopted the TEC's report, and requested the TEC to further elaborate its modalities on linkages with other relevant institutional arrangements under and outside the Convention for the COP to consider at its next session in 2012.¹⁵

The second element of the Technology Mechanism, the Climate Technology Centre and Network, proved to be more difficult, however. Decided in Cancún as an "empty shell", Parties needed to flesh out the CTCN's terms of reference, governance arrangements, and reporting lines, as well as picking a host organization for the centre over the course of the Durban conference. The final decision on technology transfer adopts the CTCN's terms of reference contained in an annex to the decision. The decision requests the CTCN to elaborate its modalities and procedures based on its TORs, once it is operational.¹⁶

Importantly, the relationship between the TEC and the CTCN needed to be clarified. Developing countries had in the past called for the TEC to be a political oversight body to the CTCN, while industrialised countries see it as a body of specialists without the need for political power. In the final decision, the TEC has not been given a governing function within the CTCN. However, the same decision establishes a new advisory board to the CTCN that can be seen as an oversight body. This results in a rather complicated, but workable governance structure.¹⁷

Finally, financing of technology transfer has still not been secured. The decision calls for various sources to be considered for funding, and requests the GEF to support the CTCN in its operationalization and activities.¹⁸ However, there is no further link between funding and the Technology Mechanism's operation and activities as a whole, and no dedicated window for technology transfer in the Financial Mechanism of the Convention. It is unclear if the Technology Mechanism will be able to deliver viable results without clear and reliable financial backing.

¹⁴ LCA Outcome, *supra* note 4, Section IV

¹⁵ Decision 4/CP.17, Technology Executive Committee – modalities and procedures, Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its seventh session, held in Durban from 28 November to 11 December 2011, Addendum, Part Two: Action taken by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol at its seventh session, FCCC/CP/2011/9/Add.1, 15 March 2012, pp. 67-79.

¹⁶ LCA Outcome, *supra* note 4, Section V

¹⁷ *Ibid.*

¹⁸ *Ibid.*

(4) Assessment and Outlook

How to judge the Durban outcome depends on what yardstick one uses: what is possible in terms of Realpolitik or what is necessary to actually prevent dangerous climate change.

In terms of Realpolitik Durban probably achieved the maximum of what was possible. The conference agreed on a second commitment period for the Kyoto Protocol and decided to launch a new dedicated process to negotiate a comprehensive climate agreement, “a protocol, another legal instrument or an agreed outcome with legal force“. So progressive countries succeeded in getting a roadmap for a new treaty, despite the strong objection from in particular the USA, India and China. Indeed, there was a very real possibility that there would be no outcome from Durban at all and it is doubtful whether it would have been possible to put the climate process back on its feet after another such blow two years after Copenhagen. In addition, the resolution of the issues around the roadmap and the Kyoto Protocol made it possible to go forward with the decisions on implementing the Cancún Agreements.

The new “Ad Hoc Working Group on the Durban Platform for Enhanced Action” is supposed to start work in 2012 and finish as early as possible but not later than 2015. However, the new agreement is supposed to come into effect and be implemented only from 2020. Until this new agreement takes effect all there is are the non-binding pledges from Copenhagen and Cancún and these are too weak to achieve the 2°C target. The decision therefore stipulates that the new process shall raise the level of ambition and that there shall be workshops to that effect in 2012. However, there already were such workshops this year and they delivered rather few results.

In addition, while a lot of the reporting on Durban asserts that countries agreed to work out a deal that will force everyone in a legally binding manner to reduce emissions after 2020, that is not necessarily true. The Durban agreement stipulates that there is to be a new legally binding agreement, but it does not say anywhere that this agreement is supposed to include legally binding emission reduction commitments, so this question is still completely open. Therefore, while Durban re-opened the door to a regime with enforceable reduction targets that seemed to have been closed in Copenhagen, the road to get there will be long and difficult.

The significance of the Durban Platform is hence not so much that a new process has been launched. One may indeed wonder why launching a new process was even necessary. The Bali roadmap has not been completed yet. If the main desire was to agree that there should be a legally binding outcome, it would have sufficed to specify the mandate of the AWG-LCA accordingly.

Instead, the LCA will be terminated in 2012 and a new process will be started. And while the Bali roadmap contained a clear “firewall” between Annex I and non-Annex I, the Durban Platform does not. The new agreement is to be “applicable to all Parties” under the UNFCCC. While this does not necessarily mean that all will have the same kind of commitments – or indeed any kind of legally binding commitments as noted above –, this is clearly the intention of industrialised countries.

It is also notable that developing countries were not able to include any explicit reference to the Convention’s principles of equity and common but differentiated responsibilities (CBDR) in the text. In the endgame India had to trade away its insistence on including an explicit reference to CBDR in order to secure the weaker language on what legal outcome the new process is to have. Apparently, while the EU would have agreed to including CBDR in the text, this was non-negotiable for the USA who has for years insisted on legal parity between all major emitters. CBDR has not gone away as the new agreement will be negotiated in the framework of the Convention and hence all the principles of the Convention

should also apply to the new agreement, but it is nevertheless telling that it was not possible to include an explicit reference to one of the Convention's key principles in the text.

What is also significant is that the old alliances are increasingly becoming unstuck. Traditionally, developing countries used to negotiate as one block in the G-77. In recent years, however, SIDS and LDCs have increasingly clashed with the larger G-77 countries on what should be the way forward. While AOSIS and the LDCs have demanded to negotiate a second protocol to work alongside the Kyoto Protocol, in particular China, India and Saudi Arabia have held that form should follow function. When India held up the primacy of development in Durban, Grenada retorted, "While they develop, we die in the process. Why should we accept this?"

Brazil, China, India and South Africa for their part have in recent years also developed a distinct identity in the BASIC block – but in Durban this block fractured as well. South Africa supported a roadmap from the beginning and Brazil also swung around. China, having been made the scapegoat for the failure in Copenhagen, was extremely careful to show flexibility and highlight their achievements in reducing emissions. Among the BASIC countries India was hence rather alone in its hard-line positioning.

While the climate train was therefore put back on the tracks in Cancún and Durban has now charted a new way forward, success is far from assured given the persisting fundamental differences between the major emitters.

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